

AO 120 (Rev. 3/04)

TO: **Mail Stop 8**  
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**REPORT ON THE  
 FILING OR DETERMINATION OF AN  
 ACTION REGARDING A PATENT OR  
 TRADEMARK**

In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been  
 filed in the U.S. District Court \_\_\_\_\_ of Connecticut on the following ☐ Patents or ☒ Trademarks:

DOCKET NO. 3:08cv1511(MRK)	DATE FILED 10/1/2008	U.S. DISTRICT COURT _____ of Connecticut
PLAINTIFF  Diageo North America, Inc.		DEFENDANT  Robert Strasburg
PATENT OR	DATE OF PATENT	HOLDER OF PATENT OR TRADEMARK
1 14 <sup>TM</sup> pgs. 3-5		See attached copy of complaint.
2		
3		
4		
5		

In the above—entitled case, the following patent(s)/ trademark(s) have been included:

DATE INCLUDED	INCLUDED BY <input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading		
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK	
1			
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In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT
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CLERK  Robin D. Tabora	(BY) DEPUTY CLERK 	DATE  10/7/2008
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Copy 1—Upon initiation of action, mail this copy to Director Copy 3—Upon termination of action, mail this copy to Director  
 Copy 2—Upon filing document adding patent(s), mail this copy to Director Copy 4—Case file copy

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF CONNECTICUT

DIAGEO NORTH AMERICA, INC., )  
 )  
Plaintiff, )  
 )  
v. ) Case No. \_\_\_\_\_  
 )  
ROBERT STRASBURG, )  
 )  
Defendant. )  
\_\_\_\_\_ )

September 30, 2008

**COMPLAINT**

Plaintiff Diageo North America, Inc. ("Diageo") states the following for its complaint against Defendant Robert Strasburg ("Strasburg"):

**JURISDICTION AND VENUE**

1. This is an action at law and in equity for trademark infringement and dilution, injury to business reputation, unfair competition, false advertising, and deceptive trade practices arising under the Trademark Act of 1946, 15 U.S.C. §§ 1051 *et seq.* (1994) ("Lanham Act"); the antidilution laws of the several states; the fair business practices and unfair and deceptive trade practices acts of the several states, including the Connecticut Unfair Trade Practices Act, Conn. Gen. Stat. § 42-110a *et seq.*; and the common law.

2. This Court has subject matter jurisdiction over this action under section 39 of the Lanham Act, 15 U.S.C. § 1121, and under 28 U.S.C. §§ 1331 and 1338. This Court has jurisdiction over Diageo's related state and common-law claims pursuant to 28 U.S.C. §§ 1338 and 1367.

3. This Court has personal jurisdiction over Defendant because Defendant has distributed or sold infringing goods within this State, has engaged in acts or omissions within this

State causing injury, has engaged in acts or omissions outside of this State causing injury within this State, has manufactured or distributed products used or consumed within this State in the ordinary course of trade, or otherwise has made or established contacts within this State sufficient to permit the exercise of personal jurisdiction.

4. This District is a proper venue pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to Diageo's claims occurred in this District.

#### **DIAGEO'S TRADEMARK RIGHTS**

5. Diageo's parent, Diageo plc, is the world's leading provider of premium drinks and alcohol brands in the spirits, wine, and beer categories. These brands include CAPTAIN MORGAN, CROWN ROYAL, GUINNESS, SMIRNOFF, JOHNNIE WALKER, BAILEYS, J&B, JOSÉ CUERVO, TANQUERAY, BEAULIEU VINEYARD, STERLING VINEYARDS, and BUSIMILIS. Although Diageo plc is a global company that trades in over 180 markets around the world, with offices in approximately 80 countries, sales in North America comprise the majority (nearly 40%) of Diageo's total sales. Diageo plc is listed on the New York Stock Exchange and the London Stock Exchange.






6. The characteristic taste of Diageo's CAPTAIN MORGAN® Original Spiced Rum is achieved through a unique and proprietary recipe. The CAPTAIN MORGAN brand is one of Diageo's most successful brands; indeed, close to six million cases of CAPTAIN MORGAN® Original Spiced Rum were sold in the United States in 2006 alone.



7. The CAPTAIN MORGAN mark has been used in the United States since at least as early as 1971. As a result of this long and extensive use, the mark is well known and highly respected among consumers as a distinctive symbol of the highest quality of spiced rum and

related goods. Diageo thus has established extensive common law rights in the CAPTAIN MORGAN mark, which represents substantial and valuable goodwill among consumers.

8. To protect and enforce its trademark rights, Diageo has applied to register its CAPTAIN MORGAN mark and variations of it. Diageo is the owner of U.S. Trademark Registration No. 972,985 of the mark CAPTAIN MORGAN, U.S. Trademark Registration No. 1,285,506 of the mark CAPTAIN MORGAN & Captain Morgan Pirate Design, U.S. Trademark Registration No. 2,164,752 of the mark CAPTAIN MORGAN & Captain Morgan Pirate Design (all of which have obtained incontestable status), and U.S. Trademark Registration No. 3,159,948 of the mark CAPTAIN MORGAN. Including these registrations, Diageo is the owner of the following federal registrations of, and applications to register, the following various CAPTAIN MORGAN marks:

Mark	Goods	Priority Date/ Date of First Use
CAPTAIN MORGAN Reg. No. 3283932	Metal key chains and metal name plates; clocks; beverage glassware, mugs, swizzle sticks, and coasters not made of metal; towels; T-shirts, sweatshirts, shirts, tank tops, trousers, boxer shorts, pants, sleepwear, jackets, swimwear, caps, hats, visors, sun visors and sandals.	Apr. 29, 2004
CAPTAIN MORGAN TATTOO Reg. No. 3032300	Alcoholic beverages, namely, rum and flavored rums.	June 2004
CAPTAIN MORGAN FOR PRESIDENT Reg. No. 3016339	Alcoholic beverages, namely, distilled spirits.	Sep. 1, 2000
CAPTAIN MORGAN Reg. No. 3455198	Magnets; chalkboards, calendars, post cards, party invitations and note cards; messenger bags, carry-on bags and umbrellas; non-metal keychains, mirrors, picture frames and deck chairs; drip mats made of rubber; Christmas tree ornaments and flying discs.	Apr. 29, 2004

Mark	Goods	Priority Date/ Date of First Use
CAPTAIN MORGAN (stylized) Reg. No. 3159948 	Alcoholic beverage, namely, distilled spirits.	Apr. 15, 1982
CAPTAIN MORGAN'S PARROT BAY & Design Reg. No. 3435814 	Distilled spirits.	May 21, 1997
CAPTAIN MORGAN'S PARROT BAY & Design Reg. No. 3435813 	Distilled spirits.	May 21, 1997
CAPTAIN MORGAN TATTOO Reg. No. 3435812	Distilled spirits.	June 2004
CAPTAIN MORGAN & Design Reg. No. 2751965 	Rum.	Dec. 7, 2001
CAPTAIN MORGAN'S PARROT BAY & Design Reg. No. 2168573 	Rum.	Feb. 12, 1997

Mark	Goods	Priority Date/ Date of First Use
CAPTAIN MORGAN'S PARROT BAY & Design Reg. No. 2164752 	Rum.	Feb. 12, 1997
CAPTAIN MORGAN'S Reg. No. 1783555	Pepper sauce.	Aug. 8, 1991
CAPTAIN MORGAN & Design Reg. No. 1285506 	Rum.	Apr. 15, 1982
CAPTAIN MORGAN Reg. No. 972985	Rum.	Dec. 23, 1971

The marks underlying these registrations and applications are referenced collectively as the CAPTAIN MORGAN Marks.

#### **DEFENDANT'S UNLAWFUL ACTIVITIES**

9. On information and belief, Defendant is an online retailer who is distributing, marketing, offering for sale, and selling goods in interstate commerce under Diageo's CAPTAIN MORGAN Marks.

10. In July 2007, Diageo became aware that a recipe was being offered for sale on eBay as "Captain Morgan's Spiced Rum / Yes we figured it out!" The online auction prominently featured the CAPTAIN MORGAN word mark and the CAPTAIN MORGAN & Pirate Design mark. The auction identified the seller as "strasburg22." Attached as Exhibit A is a print-out confirming this online auction.

11. In response to Diageo's request, eBay terminated the auction. Diageo asked eBay to identify the seller, and eBay identified "strasburg22" as Defendant Robert Strasburg.

Attached as Exhibit B is a redacted copy of the communication from eBay identifying Robert Strasburg as the seller.

12. Diageo then learned that Defendant was offering the recipe for sale as the recipe for CAPTAIN MORGAN® Original Spiced Rum on a web site at the domain [www.stilldrinkin.com](http://www.stilldrinkin.com). Diageo is aware of at least one sale to an address in Connecticut.

Attached as Exhibit C is a print-out from the [www.stilldrinkin.com](http://www.stilldrinkin.com) web site.

13. Diageo contacted Defendant in writing on August 9, 2007 and demanded that he stop offering the recipe for sale as the CAPTAIN MORGAN® Original Spiced Rum recipe and stop infringing the CAPTAIN MORGAN Marks. Attached as Exhibit D is a copy of that letter. No response was received. Diageo then contacted Defendant again August 23, 2007 to repeat its demands, and again, no response was received. Attached as Exhibit E is a copy of Diageo's second letter to Defendant.

14. Through its counsel, Diageo then contacted Defendant by telephone on January 9, 2008. During that call, Defendant confirmed that he did not know the actual or authentic recipe for CAPTAIN MORGAN® Original Spiced Rum, and agreed to stop offering the recipe for sale and to stop using the CAPTAIN MORGAN Marks. Attached as Exhibit F is a copy of Diageo's January 10, 2008 letter confirming the substance of that telephone call, and proof that FedEx delivered the letter to Defendant.

15. Defendant agreed to sign and return a copy of that letter, but failed to do so. The Captain Morgan Pirate Design was replaced with a skeletal pirate design, but Defendant continued to display the CAPTAIN MORGAN word mark and offer his rum recipe for sale as

the authentic CAPTAIN MORGAN® Original Spiced Rum recipe. The site also maintained the wording "Captain Morgan's Spiced Rum / Yes we figured it out!" Diageo therefore contacted Defendant by telephone again on January 29, 2008. Defendant claimed that he had not received Diageo's previous letters, but asked that the letter be sent again so that he could sign a copy of the letter agreement confirming that he would comply with Diageo's demands. Attached as Exhibit G is a copy of Diageo's February 1, 2008 letter confirming that call. Again, no response was received. The web site still includes the claim that Defendant "figured out" Diageo's CAPTAIN MORGAN® Original Spiced Rum recipe, slightly revised to read "Just Like Captain Morgan's Spiced Rum / Yes we figured it out!" Attached as Exhibit H is a print-out confirming the current content of the [www.stilldrinkin.com](http://www.stilldrinkin.com) site.

16. During the preparation of this Complaint, Diageo learned of another web site which is virtually identical in content to the [www.stilldrinkin.com](http://www.stilldrinkin.com) site and also claims to offer Diageo's CAPTAIN MORGAN® Original Spiced Rum recipe. This site also features the claim, "Just Like Captain Morgan's Spiced Rum / Yes we figured it out!" The web site is associated with the domain [www.realmecoymoonshinestills.com](http://www.realmecoymoonshinestills.com). Attached as Exhibit I is a print-out confirming the current content of the site. The domain associated with the site was registered on March 14, 2008 – after Diageo objected to Defendant's use of the CAPTAIN MORGAN Marks – in the name of PrivacyProtect.org, which provides a "privacy solution for domain name owners" and masks their identities. Attached as Exhibit J is a copy of the registrant record for the domain, and a print-out from the home page of PrivacyProtect.org. Although the registrant information for this domain is not available, the Support pages for the [www.stilldrinkin.com](http://www.stilldrinkin.com) site and the [www.realmecoymoonshinestills.com](http://www.realmecoymoonshinestills.com) site both list the same telephone number – (616)



499-4559. Attached as Exhibit K are print-outs of these Support pages. Efforts to conduct a "reverse look-up" search for this telephone number were unsuccessful.

17. The goods marketed, sold, and offered for sale by Defendant are not manufactured by Diageo, nor is Defendant associated or connected with Diageo, or licensed, authorized, sponsored, endorsed, or approved by Diageo in any way.

18. Defendant's use of Diageo's identical trademarks is likely to deceive, confuse, and mislead prospective purchasers and purchasers into believing that the recipe sold by Defendant is the actual recipe for Diageo's CAPTAIN MORGAN® Original Spiced Rum, or is authorized by, or in some manner associated with, Diageo, which is not true.

19. The likelihood of confusion, mistake, and deception engendered by Defendant's misappropriation of Diageo's CAPTAIN MORGAN Marks is causing irreparable harm to the goodwill symbolized by the CAPTAIN MORGAN Marks and the reputation for quality that they embody.

20. Defendant's activities are likely to cause confusion before, during, and after the time of purchase because purchasers, prospective purchasers, and others viewing Defendant's recipe at the point of sale are likely, due to Defendant's use of confusingly similar – indeed, identical – imitations of the CAPTAIN MORGAN Marks, to mistakenly attribute the recipe to Diageo. This is particularly damaging with respect to those persons who perceive a lack of quality in the rum that is made from Defendant's recipe. By causing such a likelihood of confusion, mistake, and deception, Defendant is inflicting irreparable harm to the goodwill symbolized by the CAPTAIN MORGAN Marks and the reputation for quality that it embodies.

21. Upon information and belief, Defendant continues to use Diageo's CAPTAIN MORGAN Marks in connection with the sale of a recipe for a rum that is directly competitive to

those offered by Diageo. Defendant began selling the recipe well after Diageo established protectable rights to its CAPTAIN MORGAN Marks, and well after the CAPTAIN MORGAN Marks became famous.

22. On information and belief, Defendant knowingly, willfully, intentionally, and maliciously adopted and used Diageo's CAPTAIN MORGAN Marks.

23. Moreover, Defendant is engaged in a deliberate effort to create the impression that he "figured out" the recipe for Diageo's CAPTAIN MORGAN® Original Spiced Rum. Such claims are deceptive and misleading, and are designed to falsely suggest that Defendant's recipe is of the same or similar quality as that of Diageo's CAPTAIN MORGAN rum.

24. On information and belief, Defendant's deception is intentional. Defendant is well aware that selling a recipe for rum will be far more appealing if such rum is marketed as being the same as (or "just like") Diageo's high-quality CAPTAIN MORGAN® Original Spiced Rum. Defendant's offering the recipe under the CAPTAIN MORGAN Marks is not only misleading but also is literally false, as the recipe is not the actual or authentic recipe for Defendant's CAPTAIN MORGAN® Original Spiced Rum.

**FIRST CLAIM FOR RELIEF**  
**Federal Trademark Infringement**

25. Diageo repeats and incorporates by reference the allegations contained in paragraphs 1-24.

26. Defendant's use of Diageo's CAPTAIN MORGAN Marks is likely to cause confusion, deception, and mistake by creating the false and misleading impression that Defendant's goods are associated or connected with Diageo, or have the sponsorship, endorsement, or approval of Diageo.

27. Defendant has used marks that are confusingly similar, and in some cases, identical, to Diageo's federally registered marks in violation of 15 U.S.C. § 1114, and Defendant's activities have caused and, unless enjoined by this Court, will continue to cause a likelihood of confusion and deception of members of the trade and public, and injury to Diageo's goodwill and reputation as symbolized by the federally registered CAPTAIN MORGAN Marks, for which Diageo has no adequate remedy at law.

28. Defendant's actions demonstrate an intentional, willful, and malicious intent to trade on the goodwill associated with Diageo's federally registered CAPTAIN MORGAN Marks to Diageo's great and irreparable injury.

29. Defendant has caused and is likely to continue causing substantial injury to the public and to Diageo, and Diageo is entitled to injunctive relief and to recover Defendant's actual profits, enhanced profits, costs, and reasonable attorneys' fees under 15 U.S.C. §§ 1114, 1116, and 1117.

**SECOND CLAIM FOR RELIEF**  
**Federal Unfair Competition**

30. Diageo repeats and incorporates by reference the allegations contained in paragraphs 1-29.

31. Defendant's use of marks that are confusingly similar, and in some cases, identical, to Diageo's CAPTAIN MORGAN Marks has caused and is likely to cause confusion, deception, and mistake by creating the false and misleading impression that Defendant's goods are manufactured or distributed by Diageo, or affiliated, connected, or associated with Diageo, or have the sponsorship, endorsement, or approval of Diageo.

32. Defendant has made false representations, false descriptions, and false designations of origin of its goods in violation of 15 U.S.C. § 1125(a), and Defendant's activities

have caused and, unless enjoined by this Court, will continue to cause a likelihood of confusion and deception of members of the trade and public, and injury to Diageo's goodwill and reputation as symbolized by the CAPTAIN MORGAN Marks, for which Diageo has no adequate remedy at law.

33. Defendant's actions demonstrate an intentional, willful, and malicious intent to trade on the goodwill associated with Diageo's CAPTAIN MORGAN Marks to the great and irreparable injury of Diageo.

34. Defendant's conduct has caused, and is likely to continue causing, substantial injury to the public and to Diageo, and Diageo is entitled to injunctive relief and to recover Defendant's actual profits, enhanced profits, costs, and reasonable attorneys' fees pursuant to 15 U.S.C. §§ 1125(a), 1116, and 1117.

**THIRD CLAIM FOR RELIEF**  
**Federal False Advertising**

35. Diageo repeats and incorporates by reference the allegations contained in paragraphs 1-34.

36. Defendant's advertising and promotion of the recipe on the web sites misrepresents the nature, qualities, characteristics, and origin to create the false impression that Defendant's rum recipe is of the same or of similar quality as that of Diageo's CAPTAIN MORGAN® Original Spiced Rum, and constitutes literally false and deceptive advertising. On information and belief, Defendant's misrepresentations are material to consumer purchasing decisions.

37. Defendant's actions and conduct are, and unless enjoined by this Court will continue to be, in violation of 15 U.S.C. § 1125(a).

38. Upon information and belief, Defendant's actions and conduct have been intentional, willful, and knowing.

39. Defendant's activities have caused and, unless enjoined by this Court, will continue to mislead and deceive members of the trade and public, and therefore cause injury to Diageo's goodwill and reputation, for which Diageo has no adequate remedy at law.

40. Defendant's conduct has caused, and is likely to continue causing, substantial injury to the public and to Diageo, and Diageo is entitled to injunctive relief and to recover Defendant's actual profits, enhanced profits, costs, and reasonable attorneys' fees pursuant to 15 U.S.C. §§ 1125(a), 1116, and 1117.

**FOURTH CLAIM FOR RELIEF**  
**Federal Trademark Dilution**

41. Diageo repeats and incorporates by reference the allegations contained in paragraphs 1-40.

42. Diageo has extensively and continuously promoted and used the registered CAPTAIN MORGAN Marks in the United States and throughout the world, and the marks thereby have become a famous and well-known symbol of Diageo's goods.

43. Defendant is making use in commerce of marks that dilute and are likely to dilute the distinctiveness of Diageo's CAPTAIN MORGAN Marks by eroding the public's exclusive identification of these famous marks with Diageo, tarnishing and degrading the positive associations and prestigious connotations of the marks, and otherwise lessening the capacity of the marks to identify and distinguish Diageo's goods.

44. Defendant's actions demonstrate an intentional, willful, and malicious intent to trade on the goodwill associated with Diageo's CAPTAIN MORGAN Marks or to cause dilution of the CAPTAIN MORGAN Marks, to the great and irreparable injury of Diageo.

45. Defendant has caused and will continue to cause irreparable injury to Diageo's goodwill and business reputation, and dilution of the distinctiveness and value of Diageo's famous and distinctive CAPTAIN MORGAN Marks in violation of 15 U.S.C. § 1125(c), and Diageo therefore is entitled to injunctive relief and to Defendant's actual profits, enhanced profits, costs, and reasonable attorneys' fees pursuant to 15 U.S.C. §§ 1125(c), 1116, and 1117.

**FIFTH CLAIM FOR RELIEF**  
**State Trademark Dilution and Injury to Business Reputation**

46. Diageo repeats and incorporates by reference the allegations contained in paragraphs 1-45.

47. Diageo has extensively and continuously promoted and used the registered CAPTAIN MORGAN Marks in Connecticut, the United States, and throughout the world, and the marks have become a distinctive, famous, and well-known symbol of Diageo's goods. The CAPTAIN MORGAN Marks have been distinctive and famous prior to Defendant's unauthorized use of the marks.

48. Defendant's unauthorized use of Diageo's registered CAPTAIN MORGAN Marks has caused dilution and is likely to continue to dilute the distinctiveness of Diageo's marks by eroding the public's exclusive identification of this famous mark with Diageo, tarnishing and degrading the positive associations and prestigious connotations of the marks, and otherwise lessening the capacity of the marks to identify and distinguish Diageo's goods.

49. Defendant's actions demonstrate an intentional, willful, and malicious intent to trade on the goodwill associated with Diageo's CAPTAIN MORGAN Marks or to cause dilution of the CAPTAIN MORGAN Marks, to the great and irreparable injury of Diageo.

50. Defendant is causing and will continue to cause irreparable injury to Diageo's goodwill and business reputation, and dilution of the distinctiveness and value of Diageo's

famous and distinctive CAPTAIN MORGAN Marks in violation of the antidilution laws of the several states, including Alabama, Ala. Code § 8-12-17 (2003); Alaska, Alaska Stat. § 45.50.180 (Michie 2002); Arizona, Ariz. Rev. Stat. Ann. § 44-1448.01 (West 2003); Arkansas, Ark. Code Ann. § 4-71-213 (2002); California, Cal. Bus. & Prof. Code § 14330 (West 2003); Delaware, Del. Code Ann. 6 § 3313 (2002); Florida, Fla. Stat. Ann. § 495.151 (West 2003); Georgia, Ga. Code Ann. § 10-1-451 (2003); Hawaii, Haw. Rev. Stat. Ann. § 482-32 (Michie 2003); Idaho, Idaho Code § 48-513 (Michie 2002); Illinois, 765 Ill. Comp. Stat. Ann. 1036/65 (2003); Iowa, Iowa Code Ann. § 548.113 (West 2003); Kansas, Kan. Stat. Ann. § 81-214 (2002); Louisiana, La. Rev. Stat. Ann. § 51:223.1 (West 2003); Maine, Me. Rev. Stat. Ann. 10 § 1530 (West 2003); Massachusetts, Mass. Gen. Laws. Ann. ch. 110B, § 12 (West 2003); Minnesota, Minn. Stat. Ann. § 333.285 (West 2003); Mississippi, Miss. Code. Ann. § 75-25-25 (2003); Missouri, Mo. Ann. Stat. § 417.061(1) (West 2002); Montana, Mont. Code Ann. § 30-13-334 (2003); Nebraska, Neb. Rev. Stat. Ann. § 87-140 (Michie 2002); New Hampshire, N.H. Rev. Stat. Ann. § 350-A:12 (2003); New Jersey, N.J. Stat. Ann. § 56:3-13.20 (West 2003); New Mexico, N.M. Stat. Ann. § 57-3B-15 (Michie 2002); New York, N.Y. Gen. Bus. Law § 360-1 (2003); Oregon, Or. Rev. Stat. § 647.107 (2001); Pennsylvania, 54 Pa. Cons. Stat. Ann. § 1124 (West 1996); Rhode Island, R.I. Gen. Laws § 6-2-12 (1992) (1992); Tennessee, Tenn. Code Ann. § 47-25-513 (2003); Texas, Tex. Bus. & Com. Code Ann. § 16.29 (Vernon 2003); Utah, Ut. Code An. § 70-3a-403 (2002); Washington, Wash. Rev. Code Ann. § 19.77.160 (2003); West Virginia, W.Va. Code Ann. § 47-2-13 (Michie 2003); and Wyoming, Wyo. Stat. Ann. § 40-1-115 (Michie 2002). Diageo therefore is entitled to injunctive relief and to recover Defendant's actual profits, enhanced profits, costs, and reasonable attorneys' fees, if appropriate.

**SIXTH CLAIM FOR RELIEF**  
**Unfair and Deceptive Trade Practices**

51. Diageo repeats and incorporates by reference the allegations contained in paragraphs 1-50.

52. Defendant has been and is passing off its goods as the same as or "just like" those of Diageo, causing a likelihood of confusion or misunderstanding as to the source, sponsorship, or approval of Defendant's goods, causing a likelihood of confusion as to Defendant's affiliation, connection, or association with Diageo, and otherwise damaging the public. Moreover, as described above, Defendant has been and is advertising, promoting, and selling its rum recipe to create the false impression that Defendant's recipe is of the same or similar quality as that of Diageo's rum.

53. Defendant's conduct constitutes unfair and deceptive acts or practices in the course of a business, trade, or commerce in violation of Connecticut's Unfair Trade Practices Act, Conn. Gen. Stat. § 42-110a *et seq.*, and the unfair and deceptive trade practices statutes of other states, including Colorado, Colo. Rev. Stat. Ann. §§ 6-1-101 to 6-1-115 (West 1996 and Supp. 1998); Delaware, Del. Code Ann. 6 §§ 2531 to 2536 (1993 & Supp. 1998); Georgia, Ga. Code Ann. §§ 10-1-370 to 10-1-375 (1994); Hawaii, Haw. Rev. Stat. §§ 481A-1 to 481A-5 (1993); Illinois, 815 Ill. Comp. Stat. Ann. 510/1 to 510/7 (1993); Maine, Me. Rev. Stat. Ann. 10 §§ 1211 to 1216 (West 1996); Minnesota, Minn. Stat. Ann. § 325D.43 to .48 (West 1995); Nebraska, Neb. Rev. Stat. §§ 87-301 to 87-306 (1995); New Mexico, N.M. Stat. Ann. §§ 57-12-1 to 57-12-22 (Michie 1995); New York, N.Y. Gen. Bus. Law § 349 (McKinney 1988); Ohio, Ohio Rev. Code Ann. §§ 4165.01 to 4165.04 (West 1995); Oklahoma, Okla. Stat. Ann. 78 §§ 51 to 55 (West 1995 & Supp. 1998); and Oregon, Or. Rev. Stat. §§ 646.605 to 646.656 (1997).



54. Defendant's unauthorized use of confusingly similar imitations of Diageo's CAPTAIN MORGAN Marks has caused and is likely to cause substantial injury to the public and to Diageo, and Diageo is entitled to injunctive relief and to recover Defendant's actual profits, enhanced profits, costs, and reasonable attorneys' fees, if appropriate.

**SEVENTH CLAIM FOR RELIEF**  
**Common Law Trademark Infringement and Unfair Competition**

55. Diageo repeats and incorporates by reference the allegations contained in paragraphs 1-54.

56. Defendant's acts constitute common law trademark infringement and unfair competition, and have created and will continue to create a likelihood of confusion to the irreparable injury of Diageo unless restrained by this Court, and Diageo has no adequate remedy at law for this injury.

57. On information and belief, Defendant acted with full knowledge of Diageo's use of, and statutory and common law rights to, the CAPTAIN MORGAN Marks and without regard to the likelihood of confusion of the public created by Defendant's activities.

58. Defendant's actions demonstrate an intentional, willful, and malicious intent to trade on the goodwill associated with Diageo's CAPTAIN MORGAN Marks to the great and irreparable injury of Diageo.

59. As a result of Defendant's acts, Diageo has been damaged in an amount not as yet determined. At a minimum, however, Diageo is entitled to injunctive relief and to recover Defendant's actual profits, enhanced profits, costs, and reasonable attorneys' fees, if appropriate.

**PRAYER FOR RELIEF**

Diageo therefore prays that:

1. Defendant and all his agents, representatives, successors, partners, associates, assigns, attorneys, and all other persons acting for, with, by, through, or under authority from Defendant, or in concert or participation with Defendant, and each of them, be enjoined permanently, from:

a. using the CAPTAIN MORGAN Marks or any other copy, reproduction, or colorable imitation, or simulation of Diageo's CAPTAIN MORGAN Marks on or in connection with Defendant's goods;

b. using any trademark, service mark, name, logo, design, or source designation of any kind on or in connection with Defendant's goods that is a copy, reproduction, colorable imitation, or simulation of, or confusingly similar to, the trademarks, service marks, names, or logos of Diageo;

c. using any trademark, service mark, name, logo, design, or source designation of any kind on or in connection with Defendant's goods or services that is likely to cause confusion, mistake, deception, or public misunderstanding that such goods or services are produced or provided by Diageo, or are sponsored or authorized by or in any way connected or related to Diageo;

d. using any trademark, service mark, name, logo, design, or source designation of any kind on or in connection with Defendant's goods or services that dilutes or is likely to dilute the distinctiveness of the trademarks, service marks, names, or logos of Diageo;

e. passing off, palming off, or assisting in passing off or palming off, Defendant's goods or services as those of Diageo, or otherwise continuing any and all acts of unfair competition as alleged in this Complaint;

f. advertising, marketing, promoting, or selling any recipes under claims for such recipes that misrepresent the nature, qualities, characteristics, and origin of such recipes to create the false impression that Defendant's rum recipe is of the same or similar quality as that of Diageo's CAPTAIN MORGAN® Original Spiced Rum, or otherwise continuing any and all acts of false and deceptive advertising as alleged in this Complaint;

2. Defendant be ordered to recall all recipes sold under the CAPTAIN MORGAN Marks or any other confusingly similar mark, which have been shipped by Defendant or under Defendant's authority, to any customer including, but not limited to, any wholesaler, distributor, retailer, consignor, or marketer, and also to deliver to each customer a copy of this Court's order as it relates to the injunctive relief against Defendant;


3. Defendant be ordered to deliver up for impoundment and for destruction all recipes, packaging, labels, advertising, promotional materials, stationery, or other materials in the possession, custody, or under the control of Defendant that are found to adopt, infringe, or dilute any of Diageo's trademarks or that otherwise unfairly compete with Diageo and its goods or services or that are otherwise deceptive;

4. Defendant be compelled to account to Diageo for any and all profits derived by Defendant from the sale or distribution of infringing goods as described in this Complaint;

5. Based on Defendant's knowing and intentional use of confusingly similar imitations of Diageo's CAPTAIN MORGAN Marks and its false advertising claims, the award of Defendant's profits be enhanced as provided for by 15 U.S.C. § 1117(a).

6. Defendant be required to pay to Diageo the costs of this action and Diageo's reasonable attorneys' fees pursuant to 15 U.S.C. § 1117(a) and the state statutes cited in this Complaint.

7. Diageo have such other and further relief as the Court may deem just.

  
Catherine Dugan O'Connor, et al 17316  
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